

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**CURTIS DUANE BROWN,**

**Defendant.**

**CASE NO. 8:09CR131**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Appeal (Filing No. 46) from the Magistrate Judge's order of detention (Filing No. 42). The appeal is supported by a brief (Filing No. 47).

On August 11, 2009, the Defendant, Curtis Duane Brown, pleaded guilty to Counts I and II of the Indictment charging him with being a felon in possession of a firearm (Count I) and forfeiture (Count II). Sentencing is scheduled for November 2, 2009, initial objections to the PSR are due on September 25, 2009, and final objections and motions are due on October 13, 2009. (Filing No. 39.) On August 17, 2009, Magistrate Judge F.A. Gossett denied the Defendant's motion for release in which Brown states that his substance abuse evaluation recommends a short-term residential treatment program.

## DETENTION

In denying release without a hearing, Judge Gossett referred to Brown’s “substantial criminal history” and the lack of assurance of the safety of the community and Brown’s presence at future court proceedings.

The danger prong of the Bail Reform Act of 1984, 18 U.S.C. §§3141-3156, is implicated when a strong probability exists that a person will commit additional crimes if

released and there are no conditions of release or combination of conditions that will reasonably assure that future crimes will not be committed and, accordingly, the safety of the community is at risk. 18 U.S.C. § 3142(e). Moreover, § 3143 states that a defendant who has been convicted and is awaiting sentencing must be detained absent specific criteria, one of which a finding by clear and convincing evidence that the person will not flee or pose a danger to the community.

Under NECrimR 46.2(c) this Court has conducted a de novo review of this matter. This Court affirms the Magistrate Judge's detention order. The Court notes the following: Brown's substantial and steady criminal history; Brown's numerous convictions and charges for failure to appear; and Brown's substantial history of felony convictions. Also, the Court notes that although treatment was recommended no information was presented indicating that a bed is available allowing Brown to complete treatment before his sentencing date, and if a bed were available that Brown would be available to counsel for presentencing purposes.

IT IS ORDERED:

1. The Defendant's Appeal (Filing No. 46) is denied; and
2. The Magistrate Judge's detention order (Filing No. 42) is affirmed.

DATED this 24<sup>th</sup> day of August, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge